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                   UNITED STATES DISTRICT COURT
21   **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

22   CHASOM BROWN, *et al.*, individually and   Case No. 4:20-cv-03664-YGR-SVK
     on behalf of themselves and all others
23   similarly situated,   **DECLARATION OF JOSEPH H.**
                                                    MARGOLIES IN SUPPORT OF
24   Plaintiffs,   **ADMINISTRATIVE MOTION TO SEAL**
                                                    PORTIONS OF PLAINTIFFS' RESPONSE
25   v.   **TO THE COURT'S ORDER TO SHOW**
                                                    CAUSE
26   GOOGLE LLC,

27   Defendant.   Judge: Hon. Susan van Keulen, USMJ

28

                                                    Case No. 4:20-cv-03664-YGR-SVK

I, Joseph H. Margolies, declare as follows:

1.   I am a member of the bar of the State of New York and an attorney at Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendant Google LLC ("Google") in this action. I have been admitted *pro hac vice* in the United States District Court for the Northern District of California in connection with this action. Dkt. 827. I make this declaration of my own personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2.   I am making this declaration pursuant to Civil Local Rule 79-5(e)–(f) as an attorney for Google as the Designating Party, pursuant to Civil Local Rule 79-5(f)(3) in response to Dkt. 833.

3.   On January 20, 2023, Plaintiffs filed their Administrative Motion to Consider Whether Google's Materials Should Be Sealed regarding Plaintiffs' Response to Google's Administrative Motion (Dkt. 833) re: the Court's Order to Show Cause (Dkt. 784). On January 20, 2023, I received an unredacted service copy of these documents.

4.   The common law right of public access to judicial proceedings is not a constitutional right and it is "not absolute." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *Crowe v. Cnty. of San Diego*, 210 F. Supp. 2d 1189, 1194 (S.D. Cal. 2002) ("[T]here is no right of access which attaches to all judicial proceedings." (internal citations omitted)). The right is weakest where, as here, the proceedings concern a non-dispositive discovery motion; rather than satisfy the more stringent "compelling reasons" standard, a party seeking to seal materials in these circumstances must make only a "particularized showing" of "good cause." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). Such sealing is appropriate when the information at issue constitutes "competitively sensitive information," such as "confidential research, development, or commercial information." *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts' "broad latitude" to "prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information"); *Standard & Poor's Corp. Inc. v. Commodity Exch., Inc.*, 541 F. Supp. 1273, 1275 (S.D.N.Y. 1982) ("[T]he overriding interest to be

found in business confidences . . . require[s] . . . temporary reasonably restricted access to the

Courtroom of members of the public.").

5. I have reviewed the documents that Plaintiffs seek to file under seal pursuant to Civil

Local Rule 79-5(f). Based on my review, there is good cause to seal the following information:

Document(s) to be Sealed	Basis for Sealing
Plaintiffs' Response to the Court's Order to Show Cause **(Dkt. 833-1)** Pages i:19, i:21, 1:9–12, 1:15, 1:18, 2:19, 2:23, 2:25, 3:27, 4:22, 6:3, 6:19, 7:13, 7:18–22, 8:11, 8:19, 8:22–23, 9:1, 9:12, 9:23–24, 9:26, 11:11, 11:22–23, 11:25–27, 12:2, 12:4–5, 12:8, 12:14–15, 12:22, 13:3–4, 13:13, 13:18, 13:20, 14:6–7, 14:10, 14:13, 14:17, 14:25, 16:1, 16:3, 16:8-9, 16:12–13, 16:19, 16:25–26, 17:7, 17:12, 17:15–16, 18:9, 24:8, 25:27	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of internal projects, data fields and logs, and their proprietary functionalities, as well as internal metrics, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 1 to Mao Declaration **(Dkt. 833-2)** Pages 8:14, 8:26, 10:5, 10:13, 10:24	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 2 to Mao Declaration **(Dkt. 833-2)** PDF Pages 4–6	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various internal projects, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or

	Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 3 to Mao Declaration **(Dkt. 833-2)** Pages 1–2	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including a particular data field and its proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies and business practices, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 4 to Mao Declaration **(Dkt. 833-2)** PDF Pages 2–3	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including a particular data field, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Exhibit 6 to Mao Declaration **(Dkt. 833-2)** Pages 10:7–8, 13:12, 149:21, 150:1, 150:12–13, 151:8, 152:4–5, 152:25	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including an internal project, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary

	information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products. The information sought to be sealed also contains an individual's personally identifying information.
Exhibit 7 to Mao Declaration **(Dkt. 833-2)** PDF Pages 4–5	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including particular data fields and logs, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Declaration of Christopher Thompson in Support of Plaintiffs' Supplemental Sanctions Brief **(Dkt. 833-3)** Pages 2:6, 2:17–18, 2:20, 2:25, 3:11, 3:27, 4:1, 4:5-6, 4:13, 5:7, 5:11, 5:13–15, 6:3, 6:5–6, 6:8–13, 6:15–16, 6:18-28, 7:1–2, 7:5–6, 7:24–27, 8:17, PDF page 13	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and operations, including various types of internal projects, data fields and logs, and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.
Declaration of Jay Bhatia in Support of Plaintiffs' Response to Google's Response to the Order to	The information requested to be sealed contains Google's highly confidential and proprietary information regarding highly sensitive features of Google's internal systems and

Show Cause **(Dkt. 833-4)** Pages 2:3–5, 2:12, 3:3–6, 3:8–10, 3:14–16, 3:18–19, 3:22, 3:26–27, 4:7, 4:9, 4:11–12, 4:16–17, 4:20	operations, including source code, particular data fields and their proprietary functionalities, as well as internal metrics, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google's competitors. Such confidential and proprietary information reveals Google's internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. *See* Dkt. 81 at 2–3. Public disclosure of such confidential and proprietary information could place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google's internal practices relating to competing products.

6.   Google's request is narrowly tailored in order to protect its confidential, privileged, and protected information. These redactions are limited in scope and volume. Because the proposed redactions are narrowly tailored and limited to portions containing Google's highly-confidential, confidential, or privileged information, Google requests that the portions of the aforementioned documents be redacted from any public version of those documents.

7.   Google does not seek to redact or file under seal any of the remaining portions of documents not indicated in the table above.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed in Bayside, Wisconsin on January 27, 2023.

By _____ /s/ *Joseph H. Margolies* _____

                    Joseph H. Margolies
                    Attorney for Defendant